

## § 1016.43

1954, as amended, Espionage Act, or other Federal statutes related to Restricted Data. Additionally, the permittee shall report any infractions, losses, compromises, or possible compromise of Restricted Data.

### § 1016.43 Inspections.

The DOE shall make such inspections and surveys of the premises, activities, records, and procedures of any person subject to the regulations in this part as DOE deems necessary to effectuate the purposes of the Act, Executive Order 12958, as amended, and DOE orders and procedures.

[48 FR 36432, Aug. 10, 1983, as amended at 71 FR 68735, Nov. 28, 2006]

### § 1016.44 Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Act or any regulation or order issued thereunder. Any person who willfully violates, attempts to violate, or conspires to violate any provision of the Act or any regulation or order issued thereunder, including the provisions of this part, may be guilty of a crime and upon conviction may be punished by fine or imprisonment, or both, as provided by law.

## PART 1017—IDENTIFICATION AND PROTECTION OF UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION

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AUTHORITY: 42 U.S.C. 2168; 28 U.S.C. 2461 note.

SOURCE: 50 FR 15822, Apr. 22, 1985, unless otherwise noted.

### § 1017.1 Purpose and scope.

(a) This part contains regulations of the Department of Energy (DOE) implementing section 148 (42 U.S.C. 2168) of the Atomic Energy Act which prohibits the unauthorized dissemination of certain unclassified government information. This information, identified by the term “Unclassified Controlled Nuclear Information” (UCNI), is limited to information concerning atomic energy defense programs.

(b) These regulations—

(1) Provide for the review of information prior to its designation as UCNI;

(2) Describe how information is determined to be UCNI;

(3) Establish minimum physical protection standards for documents and material containing UCNI;

(4) Specify who may have access to UCNI; and

(5) Establish a procedure for the imposition of penalties on persons who violate section 148 of the Atomic Energy Act or any regulation or order of the Secretary issued under section 148 of the Atomic Energy Act, including these regulations.

### § 1017.2 Applicability.

These regulations apply to—

(a) Any person authorized access to UCNI;

(b) Any person not authorized access to UCNI who acquires, attempts to acquire, or conspires to acquire, in violation of these regulations, Government information in any document or material containing an UCNI notice (refer to § 1017.15); and

(c) Any person not authorized access to UCNI but who wants to be authorized access to UCNI.

### § 1017.3 Definitions.

As used in this part—

(a) *Atomic Energy Act* means the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*).

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(b) *Atomic Energy Defense Programs* means activities, equipment, and facilities of the DOE or other Government agencies utilized or engaged in support of the—

(1) Development, production, testing, sampling, maintenance, repair, modification, assembly, utilization, transportation, or retirement of nuclear weapons or components of nuclear weapons;

(2) Production, utilization, or transportation of nuclear material for military applications; or

(3) Safeguarding of activities, equipment, or facilities which support the functions in paragraphs (b)(1) and (b)(2) of this section, including the protection of nuclear weapons, components of nuclear weapons, or nuclear material for military applications at a fixed facility or in transit.

(c) *Authorized Individual* means a person who has been granted routine access to UCNI under § 1017.16(a).

(d) *Component* means any operational, experimental, or research-related part, subsection, design, or material used in the manufacture or utilization of a nuclear weapon, nuclear explosive device, or nuclear weapon test assembly.

(e) *Controlling Official* means an individual authorized under § 1017.7(a) to make a determination that specific Government information is, is not, or is no longer UCNI, such determination serving as the basis for determinations by a Reviewing Official that a document or material contains, does not contain, or no longer contains UCNI.

(f) *Denying Official* means an individual authorized under § 1017.12(b) to deny a request made under statute or Executive order for all or any portion of a document or material containing UCNI.

(g) *Document or Material* means the physical medium on or in which information is recorded, or a product or substance which contains or reveals information, regardless of its physical form or characteristics.

(h) *Formerly Restricted Data* means a category of information classified under section 142 d. of the Atomic Energy Act.

(i) *Government* means the Executive Branch of the United States Government.

(j) *Government Information* means any fact or concept, regardless of its physical form or characteristics, that is owned by, produced by or for, or otherwise controlled by the United States Government.

(k) *In Transit* means the physical movement of a nuclear weapon, a component of a nuclear weapon, or nuclear material from one part to another part of a facility or from one facility to another facility. An item is considered “in transit” until it has been relinquished to the custody of the authorized recipient at its ultimate destination. An item in temporary storage pending shipment to its ultimate destination is “in transit.”

(l) *National Security Information* means a category of information classified under Executive Order 12356, “National Security Information,” or its successor executive orders.

(m) *Nuclear Material* means special nuclear material, byproduct material, or source material as defined by sections 11 aa., 11e., and 11z., respectively, of the Atomic Energy Act, or any other material used in the production, testing, utilization, or assembly of nuclear weapons or components of nuclear weapons that the Secretary determines to be nuclear material under § 1017.10(a).

(n) *Nuclear Weapon* means atomic weapon.

(o) *Physical Security* means the combination of operational and security equipment, personnel, and procedures used to protect facilities, information, documents, or material against theft, sabotage, diversion, or other criminal acts.

(p) *Restricted Data* means a category of information classified under section 142 of the Atomic Energy Act.

(q) *Reviewing Official* means an individual authorized under § 1017.12(a) to make a determination, based on guidelines which reflect decisions of Controlling Officials, that a document or material contains UCNI.

(r) *Safeguards* means an integrated system of physical protection, personnel reliability, accountability, and material control measures designed to deter, prevent, detect, and respond to

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unauthorized access, diversion, or possession of a nuclear weapon, a component of a nuclear weapon or nuclear material.

(s) *Secretary* means the Secretary of Energy.

(t) *Unauthorized Dissemination* means the intentional or negligent transfer, in any manner, by any person, of information contained in a document or material determined by a Reviewing Official to contain UCNI and marked in accordance with §1017.15 to any person other than an Authorized Individual or a person granted special access to UCNI under §1017.16(b).

(u) *Unclassified Controlled Nuclear Information* means certain unclassified government information prohibited from unauthorized dissemination under section 148 of the Atomic Energy Act—

(1) Which concerns atomic energy defense programs;

(2) Which pertains to—

(i) The design of production facilities or utilization facilities;

(ii) Security measures (including security plans, procedures, and equipment) for the physical protection of—

(A) Production or utilization facilities;

(B) Nuclear material contained in such facilities; or

(C) Nuclear material in transit; or

(iii) The design, manufacture, or utilization of any nuclear weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category by the Chief Health, Safety and Security Officer (or the head of the predecessor agency of the Department of Energy) pursuant to section 142 of the Atomic Energy Act; and

(3) Whose unauthorized dissemination, as determined by a Controlling Official, could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

(i) Illegal production of nuclear weapons; or

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(ii) Theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

[50 FR 15822, Apr. 22, 1985, as amended at 71 FR 68735, Nov. 28, 2006]

#### § 1017.4 Policy.

It is the policy of the DOE to make information publicly available to the fullest extent possible. These regulations shall be interpreted and implemented so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security, consistent with the requirement in section 148 of the Atomic Energy Act to prohibit the unauthorized dissemination of UCNI. For example—

(a) Although UCNI is not subject to disclosure under the Freedom of Information Act (FOIA), documents or material containing both UCNI and other information which is not UCNI shall have the portions of the document or material not containing UCNI released to the maximum possible extent in response to a request made under the FOIA, subject to other exemptions of the FOIA; and

(b) To the fullest extent possible, the fundamental DOE policy of full disclosure of documents prepared under the National Environmental Policy Act (NEPA) and its implementing regulations will be followed. In some cases, this will mean that UCNI may be excised from documents to be made publicly available and prepared as an appendix, or otherwise segregated so as to allow the release of the nonsensitive portions of a document.

#### § 1017.5 Prohibitions.

Government information shall not be controlled as UCNI in order to—

(a) Conceal violations of law, inefficiency, or administrative error;

(b) Prevent embarrassment to a person or organization;

(c) Restrain competition; or

(d) Prevent or delay the release of any information that does not properly qualify as UCNI.

#### § 1017.6 Exemptions.

(a) Information exempt from these regulations includes—